

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 1866/DEL/2015 (A.Y 2009-10)

Huawei Telecommunications (India) Company Pvt. Ltd. 14 th Floor-Tower-C, Unitech Cyber Park, Sector-39 Gurgaon AABCH1376E (APPELLANT)	Vs	ACIT Circle-1 Gurgaon (RESPONDENT)
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Appellant by	Sh. Kishore Kumar, Adv
Respondent by	Sh. Amit Katoch, Sr. DR

Date of Hearing	28.05.2019
Date of Pronouncement	06.06.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 13/01/2015 passed by CIT(A)-1, Gurgaon for Assessment Year 2009-10.

2. The grounds of appeal are as under:-

" On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals)-I, Gurgaon ('CIT (A)') has erred in dismissing the appeal filed by the assessee on certain additions made by learned assessing officer ('AO') in the assessment order passed under section 143(3) of the Act by passing his order under section 250(6) of the Income-tax Act, 1961 ('the Act').

Each of the ground is without prejudice and in addition to one another.

That on the facts and circumstances of the case and in law:

1. Based on the facts and in the circumstances of the case and in law, the order passed by the learned CIT (A) confirming additions made by learned AO is erroneous and bad in law.

2. Based on the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming the disallowance made by learned AO amounting to Rs 27,859,244/- representing provision for warranty by treating the same as a contingent liability without appreciating that the provision on account of warranty represents an ascertained liability which has been determined by the Appellant on the basis of costs liable to be incurred in relation to warranty obligation.

3. Based on the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming the disallowance made by learned AO amounting to Rs. 27,859,244/- by merely relying on and squarely following the order for earlier year completely disregarding the fact that every assessment year is a separate assessment year and merits fresh consideration in light of difference circumstances.

4. Based on the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the action of learned AO levying of interest by under section 234B and 234C of the Act.

5. Based on the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the action of learned AO imitating penalty proceedings u/s 271 (1)(c) of the Act."

3. The assessee Company is incorporated under the Companies Act, 1956 in 2002. During the relevant Assessment Year 2009-10, the assessee was engaged in sale of telecommunication equipment and provisions of installation, commissioning, integration and other services to various customers in India.

The assessee also provided business support services to its group Companies. Return income of Rs. 51,97,45,863/- was assessed at Rs. 55,08,11,946/-, consequent upon an addition of Rs. 2,78,59,244/- on account of provision for warranty.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR during the hearing submitted that the issue is squarely covered by the Tribunal's order in assessee's own case for Assessment Year 2008-09, being ITA No. 1494/del/2014 order dated 7/5/2018 whereby the ratio of the Hon'ble Supreme Court decision in case of Rotork Control India Pvt. Ltd. Vs. CIT(A) 314 ITR 62 was followed. The Tribunal set aside the issue to the file of the Assessing Officer.

6. The Ld. DR relied upon the order of the CIT(A) and the assessment order.

7. We have heard both the parties and perused the material available on record. The Tribunal for Assessment Year 2008-09 held as under:-

"9. We have carefully considered the rival contention and perused the orders of the lower authorities. The assessee company is engaged in the business of trading of telecom equipment and provision for installation and commissioning services related to the same. In the trading and installation services of the telecom equipment, the assessee provides warranty to the buyers. As part of the contract with the customers, it is required to provide warranty services by way of repair and replacement for a predefined period. The obligation of the appellant to provide the services is inbuilt in the contract for the sale and services only. Therefore, apparently assessee is supposed to incur certain expenditure over the period of warranty claim contract. The assessee made a provision based on the inputs from technical team for each customer contract having regard to the nature of the products supplied and

installation services provided. According to the assessee, it takes into account the labour cost, material cost and other technical services cost expected to be incurred to meet the warranty obligation with respect to these customers. Undoubtedly, the revenue earned during the year is credited to the profit and loss account of the year and the corresponding warranty provision expenditure required to be made over a period of the warranty claim is definitely to be charged to the profit and loss account to arrive at the correct figure of the profit for the year. The liability of warranty cost therefore cannot be said to contingent at all. But it is necessary that such provision of warranty expenditure is made on some scientific basis so that the estimate of provision made by the assessee can be said to be a reliable estimate of such liability. Estimates of the warranty provision depends upon a different industry in which assessee operates. There may be different manner of making a provision because of warranty services in different industry. There cannot be straightjacket formulae for warranty provision in each industry alike. Therefore, the reliable estimate made by the assessee is required to be looked from the perspective of the industry in which the assessee operates. In the present case, the assessee has obtained the estimate of the warranty claim liability based on the percentage of actual work completed until 31st of March 2008 as submitted by the technical team of the assessee. The assessee has also estimated the labour cost during the warranty period and other expenditure for execution of warranty claims of the customers. From the total ability as on 31st of March 2008, the assessee has looked that the provision outstanding at the beginning of the year and the balance provision has been made during the current year by debiting to the profit and loss account. The Ld. Lower authorities has considered the claim of the assessee and held that it is not based on any scientific methodology. However, the assessee has stated that it is received input from its technical team which is most competent to see what kind of expenditure is required to be made for the purposes of fulfilling the warranty obligation embedded in contract with the customers. Therefore, whether the provision of the assessee of warranty

expenditure is reliable estimate or not the lower authorities should have looked into the basis of the estimate made by the assessee. It is further required to be seen that what kind of expenditure have been incurred by the assessee in subsequent years that will give the best picture with the original provision made by the assessee's reliable estimate or not. Further as the sale prices has been booked into the profit and loss account the corresponding expenditure on account of warranty expenses are also a liability in present and therefore it cannot be said that it is a contingent liability wherein the contract with the customers the clauses of warranty are existing. Therefore, it is an allowable expenditure. In fact, there cannot be any doubt that the assessee is eligible for deduction of warranty expenditure. The only dispute is whether the claim made by the assessee is a reliable estimate or not but in any case, it cannot be nil. Qualification in the audit report with respect to quantification is only because of non-availability of the reliable trend for the past years. The assessee has also disclosed in the notes on accounts the details of the warranty expenses. Furthermore, the assessee has also stated that expenditure incurred during the year is not separately identifiable. The lower authorities have not examined these details. The provisions of the warranty expenditure is required to be estimated based on the past experience of the assessee demonstrated on the basis of past warranty liability on similar type of contracts and further it can be proved by incurring the warranty expenditure in subsequent period to the sales. This exercise has not been done either by the assessee or by the revenue. In view of this, we set aside the whole issue back to the file of the Ld. assessing officer with a direction to the assessee to prove before the Ld. AO how the warranty provisions have been made by the assessee along with the technical inputs received from the technical team of the assessee. The Ld. AO may examine the above claim and then decide the issue afresh on merits after giving assessee a reasonable opportunity of hearing. In the result ground No. 1 of the appeal of the assessee is allowed with above direction."

The facts are identical and there is no distinguishing facts pointed out by the Ld. DR in the present Assessment Year. Thus, Ground No. 1 to 3 are remanded back to the file of the Assessing Officer on the similar directions given by the tribunal for A.Y. 2008-09. The Assessing Officer has to verify/examine the said claim and decide the issue afresh on merits. Needless to say, the principal of natural justice be followed by giving opportunity of hearing to the assessee. Ground No. 1, 2, & 3 are of the assessee's appeal are partly allowed for statistical purpose.

8. As regards Ground No. 4 & 5, the same are consequential and hence are not adjudicated at this juncture.

9. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 06th June, 2019.

Sd/-

**(G. D. AGRAWAL)
VICE PRESIDENT**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 06/06/2019

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	27.05.2019
Date on which the typed draft is placed before the dictating Member	28.05.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	Pr.on:06/06/19
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	